

REMARKS

This Response is filed in response to the Final Office Action mailed November 10, 2008 (the "*Final Office Action*") and the Examiner Interview conducted February 9, 2009. In this Response, claims 81-85 and 95-100 remain unchanged. Claims 44-47, 54-56, 59-61, 64-80, 86-94 were previously withdrawn, and claims 1-43, 48-53, 57, 58, 62, and 63 were previously cancelled.

In the *Final Office Action*, claims 81-85 and 95-100 were rejected based on prior art grounds. More particularly, claims 81-85 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,234,456 to Silvestrini ("*Silvestrini*") in view of U.S. Patent No. 5,258,042 to Mehta ("*Mehta*"), and claims 95-100 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Silvestrini* in view of *Mehta* and further in view of U.S. Patent No. 6,090,911 to Petka et al ("*Petka et al.*"). For the reasons set forth below, these rejections are hereby traversed, and an indication of allowance of the pending claims is respectfully requested.

I. SUMMARY OF EXAMINER INTERVIEW

On February 9, 2009, the Applicant's Counsel, Shane S. Swanson and David J. McKinley, conducted a telephonic interview with Examiner Erez. During the interview, the Applicant's Counsel and the Examiner discussed how certain claimed features of the present invention were not inherent in the disclosure of *Silvestrini* and how *Silvestrini* failed to teach or make obvious a reactive material selectively applied to not all fenestrations. The parties also discussed whether the referenced prior art taught or made obvious the claim 95 recitation, "predetermined controlled rate of change."

Prior to terminating the interview, the Examiner stated that upon Applicant's filing of a formal response, the Examiner would reopen prosecution of the application. With respect to the discussion point described above, the Examiner conceded that the claimed features that the Examiner previously asserted as inherent in the disclosure of *Silvestrini* were not inherent, and that upon filing of a formal response the Examiner would further consider the Applicant's argument regarding the prior arts' failure to teach

or make obvious selective application of a reactive material. Finally, absent a more specific recitation in claim 95 of the claim element "a predetermined controlled rate of change," the Examiner found the Applicant's arguments regarding this claimed feature unpersuasive.

On February 2, 2009, a Notice of Office Communication was mailed notifying the Applicant that the Examiner's Interview Summary had been made of record.

II. REJECTIONS OF CLAIMS 81-85 UNDER 35 U.S.C. § 103

Claims 81-85 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Silvestrini* in view of *Mehta*. Of these claims, claims 82-85 depend from independent claim 81. At least for the reasons set forth below, it is submitted that these prior art rejections should be withdrawn and the pending claims allowed.

Claim 81 recites a method of treating a vascular aneurysm, comprising providing a support device having fenestrations and a reactive material selectively applied to not all of the fenestrations of said support device and activating said reactive material disposed on said device to increase the resistance to blood flow through certain fenestrations of said support device to the aneurysm.

The present rejection is improper for at least two reasons. First, neither *Silvestrini* nor *Mehta*, alone or in combination, teach or make obvious a reactive material disposed on a device to increase the resistance to blood flow through certain fenestrations of the support device, as recited in claim 85. The present rejection is based upon the assertion that these features are inherent within the disclosure of stent 40 of *Silvestrini*, as illustrated in FIG. 3 and described at column 3, lines 29-56. However, as conceded by the Examiner during the Examiner interview, the claimed feature is not inherent in the disclosure of *Silvestrini*.

As one of ordinary skill in the art would recognize, the hollow fibers 26 of *Silvestrini* would be susceptible to at least two forms of expansion, lengthening of the fiber and thickening of the fiber. Furthermore, it would be recognized that the actual effect of expansion on the inflated characteristics of the stent and, by implication, the

size of the openings 29 would be a function of the combination of these two types of expansion. Yet, *Silvestrini* fails to teach any details with respect to these factors and, significantly, makes no mention of a change in the size of the radial openings 29 as a result of the expansion of the stent 40. *Silvestrini* even fails to teach whether the portion of stent 40 shown in FIG. 3 is in an inflated or non-inflated state.

Mehta also fails to make up for the above described deficiency of *Silvestrini*. *Mehta* is directed towards a tubular stent, and makes no mention of the presence of openings, fenestrations, or a change in size of such features. At column 4, lines 19-20.

Second, as also discussed with the Examiner during the Examiner Interview, the present rejection is also improper at least for the reason that neither *Silvestrini* nor *Mehta*, alone or in combination, teach or make obvious providing a reactive material selectively applied to not all of the fenestrations of said support device and activating said reactive material to increase the resistance to blood flow through certain fenestrations of said support device. As seen in FIG. 3, *all* of the radial openings 29 of the stent 40 of *Silvestrini* are formed, in part, by the hollow fiber 26 containing the hydrophilic material 32. Therefore, even if for the sake of argument it is assumed that *Silvestrini* does make obvious increasing the resistance of flow through the radial openings 29, in contrast to the claimed invention, *all* of the radial openings 29 of the stent 40 of *Silvestrini* would be affected by the inflation of the hollow fiber 26 containing the hydrophilic material 32.

Mehta also fails to make up for this deficiency of *Silvestrini*. *Mehta* teaches a tubular stent or plug made entirely of a hydrogel and makes no mention of the presence of openings, fenestrations, or a change in size of such features. At column 4, lines 19-20.

Considering the above, it becomes self-evident that claim 81 of the present application is neither taught or made obvious by the cited prior art. Accordingly, withdrawal of the present rejection is respectfully requested.

Turning now to claims 82-85, these claims depend from claim 81 and are allowable for at least the same reasons as claim 81. Accordingly, withdrawal of these rejections is also respectfully requested. However, these claims further limit the claimed invention and are, thus, separately patentable over the cited prior art.

III. REJECTIONS OF CLAIMS 95-100 UNDER 35 U.S.C. § 103

Claims 95-100 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Silvestrini* in view of *Mehta* and further in view of U.S. Patent No. 6,090,911 to Petka et al. ("*Petka et al.*"). Of these claims, claims 96-100 depend from claim 95. In the rejection, the Examiner relied upon *Silvestrini* and *Mehta* as applied in the rejection of claims 81-85 described above and asserted that *Petka et al.* made obvious the hydrogel-specific features of claims 95-100.

The Applicant notes that independent claim 95 recites features similar to those features discussed above with respect to the rejection of claims 81-85. Namely, independent claim 95 recites, in part, providing an expandable support device having fenestrations and a stimulus-expandable hydrogel selectively applied to the support device adjacent to some but not all of the fenestrations and a lessening of the size of the adjacent fenestrations, thereby increasing the resistance to blood flow through those fenestrations to the aneurysm.

The present rejection is improper at least for the same reasons discussed above regarding the rejection of claims 81-85. That is to say, neither *Silvestrini* nor *Mehta*, alone or in combination, teach or suggest (1) a stimulus-expandable hydrogel selectively applied to the support device adjacent to some but not all of the fenestrations and (2) a lessening of the size of the adjacent fenestrations, thereby increasing the resistance to blood flow through those fenestrations to the aneurysm. Please see Applicant's remarks regarding the rejection of claims 81-85.

Furthermore, *Petka et al.* fail to make up for the deficiencies of *Silvestrini* and *Mehta*. *Petka et al.* discuss copolymers that form solutions that can reversibly gel under certain conditions and the biological synthesis thereof. ABSTRACT. *Petka et al.*

neither teach nor make obvious the Applicant's claimed support device having fenestrations or a change in the size of such fenestrations.

Considering the above, it becomes self-evident that claim 95 of the present application is neither taught or made obvious by the cited prior art. Accordingly, withdrawal of the present rejection is respectfully requested.

With respect to claims 96-100, these claims depend from claim 95 and are allowable for at least the same reasons as claim 95. Accordingly, withdrawal of the present rejection is respectfully requested. However, these claims further limit the claimed invention and are, thus, separately patentable over the cited prior art.

CONCLUSION

In view of the foregoing, it is submitted that pending claims 81-85 and 95-100 are now in condition for allowance. Hence an indication of allowability is hereby requested.

If for any reason direct communication with the Applicant's attorney would serve to advance prosecution of this case to finality, the Examiner is cordially urged to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-2809.

Respectfully submitted,



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Dated: March 9, 2009

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